

United States District Court

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

CASE NUMBER: 08-MJ- 4032

BRANDON DE CAPUA

I, Adam J. Ouzer, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

On or about January 29, 2008, in the Western District of New York, the defendant, knowingly possessed computer disks containing images of child pornography that had traveled in interstate commerce, by computer, in violation of 18 U.S.C. § 2252A(5)(B).

I further state that I am a Special Agent with the Bureau of Immigration and Customs Enforcement ("ICE") and that this complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof: (☒) Yes (☐) No

Adam J. Ouzer
ADAM J. OUZER, Special Agent
Department of Homeland Security, Bureau of
Immigration and Customs Enforcement

Sworn to before me and subscribed in my presence,

April 3, 2008
Date

at

Rochester, New York
City and State

HONORABLE MARIAN W. PAYSON, U.S.M.J.
Name and Title

Marian W Payson
Signature of Judicial Officer

08-mg-4032

AFFIDAVIT

I, Adam J. Ouzer, having been first duly sworn, do hereby depose and state as follows:

1. I am a Special Agent of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement ("ICE"), currently assigned to the ICE Special Agent in Charge in Buffalo, New York. I have been employed as a Special Agent with ICE since June, 2007. As part of my daily duties as a Special Agent with ICE, I investigate crimes involving child exploitation and child pornography including violations relating to the transportation, production, distribution, receipt and possession of child pornography, in violation of Title 18, United States Code, Section 2252A.

2. I make this affidavit in support of a criminal complaint charging BRANDON DE CAPUA with violating Title 18, United States Code, Section 2252A (5) (B), knowing possession of child pornography.

3. The statements contained in this affidavit are based on information provided to me by ICE agents, other law enforcement officers, other personnel specifically trained

in the seizure and analysis of computers and electronic media, and on my training and experience as an ICE Special Agent. Because this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that BRANDON DE CAPUA did knowingly violate Title 18, United States Code, Section 2252A (5) (B).

4. On March 28, 2007, BRANDON DE CAPUA was sentenced to probation as a Youthful Offender following a plea of guilty to Sexual Abuse - Second Degree in Monroe County Court. The factual basis for the plea involved forcible sexual contact with a thirteen year old female.

5. Under the terms and conditions of his probation, BRANDON DE CAPUA was prohibited from owning, possessing, or having under his control, "...items deemed by the probation officer or treatment provider to be pornographic or sexually stimulating". These items included but were not limited to "CD-ROMs, computer disks or other digital images, photographs, magazines, and video tapes." A further condition of his probation subjected BRANDON DE CAPUA and

his home, vehicles, businesses, or other premises to reasonable warrantless searches in order to "monitor compliance with the Order and Conditions of Probation". Seizure of any item found to be in violation of the conditions was authorized. BRANDON DE CAPUA signed an acknowledgement of these conditions as set forth in the Order and Conditions of Probation on July 27, 2007.

6. On January 29, 2008, Probation Officer Gary Ortolani conducted a walk-through of BRANDON DE CAPUA's bedroom located at 59B Seneca Manor Drive, Rochester, NY, 14621. In a sworn affidavit, Probation Officer Ortolani reported finding numerous CDs on DE CAPUA's desk. Included in this stack were several hand marked with "X's" and at least one commercially produced disk labeled "Ultra Vixens Asians II", depicting an Asian female on the cover posing in a sexually provocative manner. Two of the disks had handwritten notes which listed titles including "Best Blow Job", "Nude Teeny Veronica", and "Anal Margarita". Probation Officer Ortolani asked BRANDON DE CAPUA what was on the disks and DE CAPUA stated they were his music disks. Probation Officer Ortolani seized the disks as violating BRANDON DE CAPUA's probation.

7. On January 30, 2008, Probation Officer Ortolani and Probation Officer John Zito viewed the contents of some of the CDs seized from BRANDON DE CAPUA the day before. The viewing occurred on a disk drive with read-only function so as not to change any of the file characteristics by writing to the disk. They both reported seeing numerous pornographic images on the disks viewed including images of adult pornography, bestiality, and child pornography. The disks were turned over to ICE agents and a search warrant was obtained on February 27, 2008.

8. Subsequent to receipt of a search warrant, ICE reviewed the compact disks. Images were retrieved from a Memorex Compact Disk identifiable by red "X's" around the circumference of the disk, which met the criteria and definition of child pornography as described in Title 18, United States Code, Section 2256 (8). Two of the images found were as follows:

- a. "MafiaSex.RU_Children_Kids_Hard_000296_ChildPorn_Collection_5_Pussy_Illegal_Preteen_Underage_lolit.jpg": this image contains multiple images of child pornography. One of the images is of what appears to be a prepubescent female having vaginal intercourse with what appears to be an adult male.

- b. "MafiaSex.RU_Children_Kids_Hard_000300_ChildP
orn_Collection_10_Pussy_Illegal_Preteen_Under
age_lol2.jpg": this image contains multiple
images of child pornography. One of the
images is of what appears to be prepubescent
female performing oral sex on what appears to
be an adult male.

9. In an interview on March 5, 2008 with Special Agent Adam Ouzer and Senior Special Agent Brian Korzak, BRANDON DE CAPUA admitted that he possessed compact disks that contained child pornography. BRANDON DE CAPUA stated to agents that two years ago he had accessed the internet using public library computers and had bypassed firewalls to download and burn pornography to compact disks. When asked the age of the children on the disks BRANDON DE CAPUA stated "I think kids were 8 and up."

10. "Memorex" and "Imation" brand optical disks are both manufactured by Imation Corporation, who has Corporate Headquarters in Oakdale, MN. On February 21, 2008, a declaration was received from Mr. Yosuke Tsuchida, Sourcing Manager for Imation Corporation. In this declaration, Mr. Tsuchida stated that all Imation and Memorex brand optical disks (CD's and DVDs) sold in the United States are manufactured in Asia.

11. I respectfully submit the foregoing facts to establish probable cause to believe that BRANDON DE CAPUA did violate Title 18, United States Code, Section 2252A(5)(B), the knowing possession of computer disks containing images of child pornography that have traveled in interstate commerce, including by computer, or which were produced using materials that have traveled in interstate commerce or by computer.

Adam J. Ouzer

ADAM J. OUZER, Special Agent
Department of Homeland Security,
Bureau of Immigration and Customs
Enforcement

Sworn to before me this
3 day of April, 2008

Marian W. Payson

HONORABLE MARIAN W. PAYSON
United States Magistrate Judge